

Applicant : Richard Trocino
Serial No. : 10/718,915
Filed : November 21, 2003
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Attorney Docket No.: 22182-004001

Amendments to the Drawings:

The attached replacement sheet includes changes to FIG. 2. and replaces the original FIG. 2.

In FIG. 2, numbers 250-252 are added to make the drawings conform to the amended Specification from the Office Action of August 29, 2006.

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REMARKS

Claims 1-13 stand rejected.

Claims 1-13 are pending.

Claims 1 and 9 have allowable material.

The Specification has been amended to correct informalities.

FIG. 2 has been amended to add the designators to make the drawings conform to the Specification.

The invention only describes one way to fill the toothpaste chamber and thus the rejection under 35 U.S.C. § 112 as failing to comply the written description is traversed. Detailed arguments are in the section titled "REJECTIONS UNDER 35 U.S.C. § 112."

The invention did not intend to claim "a toothpaste tube" and thus the rejection under 35 U.S.C. § 112 as being indefinite is traversed. Detailed arguments are in the section titled "REJECTIONS UNDER 35 U.S.C. § 112."

The Examiner agreed with the Applicant that there is no antecedent problem relative to "in the exposed portion of the plunger assembly" in Claims 1 and 9 and thus the rejection under 35 U.S.C. § 112 as being indefinite is traversed. Detailed arguments are in the section titled "REJECTIONS UNDER 35 U.S.C. § 112."

EXAMINER INTERVIEW

The Examiner kindly agreed to an after Final interview on January 25, 2007 as resolution of the issues had the potential of putting the case in condition for allowance. The Applicant stated that the amendments to the Specification and the Drawings were made as recommended by the Examiner. The three rejections under 35 U.S.C. § 112 were discussed and the Applicant believes that there was agreement that these issues were resolved. The Examiner said to list in the Remarks section the conclusions and to present the detailed arguments. The Examiner stated that he believed the case would then be in condition for allowance.

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I. REJECTIONS UNDER 35 U.S.C. § 112

The Office Action rejected Claims 1-13 under 35 U.S.C. § 112 as failing to comply with the written description requirement. In the previous Office Action, the Applicant amended the claims to include limitations recited in the Summary beginning of page 4 of the Specification. Specifically on page 5, lines 7-22 the Summary has a description of how the present invention functions. This is listed below with annotations from the drawings identifying elements described in the Detailed Description.

"The twist knob (103) is coupled to a threaded shaft (204) such that rotating the twist knob (103) in a first rotary direction operates to laterally move the plunger head (251) toward the threaded opening (209) and in a second rotary direction operates to laterally move the plunger towards the plunger opening (208). Moving the plunger head (251), sealed against the sides of the chamber, operates to pull a vacuum on the chamber (105) when moved in the first direction and to pressurize the chamber (105) when moved in the second direction. A standard off-the-shelf toothpaste tube may be threaded into the threaded end of the chamber and toothpaste may be extracted from the toothpaste tube into the chamber (105) or delivered from the chamber (105) back into the toothpaste tube. After the chamber has been loaded with toothpaste and a toothbrush head section has been threaded into the threaded end, the twist knob (103) delivers toothpaste from the chamber to the top of the toothbrush bristles when rotated in the second rotary direction. The outside surface of the chamber has features that retain the cap that fits over the toothbrush head section and prevents leakage of any water or toothpaste remaining in the bristles after use. A universal adapter has threads matching the threaded end and a compliant opening for mating to a variety of off-the-shelf toothpaste tubes."

The Summary of the Invention describes only one way of putting toothpaste into and extracting toothpaste from the chamber. No one of ordinary skill in the art would assume, that since you can disassemble the toothbrush of the present invention, that this would be a way of filling the chamber with toothpaste according to an embodiment of the present invention.

The Applicant asserts that the original Specification did in fact describe, in the Summary of the Invention, only one way the "present invention" operates to fill the chamber with toothpaste and to extract toothpaste from the chamber to either apply to the bristles or to put toothpaste back into a toothbrush tube. Therefore, the Applicant asserts

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that the rejections of Claims 1-13 under 35 U.S.C. § 112 as failing to comply with the written description requirement are traversed by the above argument.

The Office Action rejected Claims 1-13 under 35 U.S.C. § 112 as being indefinite for failing to particularly point out and distinctly claim the subject matter which the Applicant regards as the invention.

The Office Action states that it is unclear, relative to Claims 1 and 9, as to whether or not the Applicant intended to claim "the toothpaste tube." The claims, as amended in the previous Office Action response, state "and wherein the portion of the toothpaste chamber will fill by only coupling a toothpaste tube containing toothpaste to the brush end when the...." The Applicant fails to see the antecedent basis problem. The toothpaste tube contains toothpaste and is coupled to the brush end as stated in the claims. This language describes the utility of the present invention in how the toothpaste chamber is filled with toothpaste. The Summary of the Invention describes this in detail and the claim language of Claims 1 and 9 recite this limitation as to how the toothpaste chamber is filled with toothpaste and how the toothpaste is extracted and applied to the toothbrush bristles. One does not have to "provide" a toothpaste tube to read on the present invention, rather one simply has to fill the toothpaste chamber as described in the limitation of Claims 1 and 9. The Applicant asserts that there is no antecedent basis problem regarding the toothpaste tube. The Office Action, thus fails to make a *prima facie* case of indefiniteness under 35 U.S.C. § 112, second paragraph as to an antecedent basis problem relative to the toothpaste tube.

The Applicant does not understand why additional language should be added; the Specification describes two ways a toothpaste tube may be "coupled" to the brush end of the toothbrush chamber. Therefore the claim is enabled. Claims 1 and 9 recited the limitation "coupling a toothpaste tube containing toothpaste to the brush end" (of the toothpaste chamber). The Applicant asserts that no language further describing how the toothpaste tube is coupled to the toothpaste chamber is necessary or required. The Office

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Action, thus fails to make a *prima facie* case of indefiniteness under 35 U.S.C. § 112, second paragraph relative to how a toothpaste tube containing toothpaste is coupled to the brush end of the toothpaste chamber.

The Office Action states that there was an antecedent basis problem relative to; "the exposed portion of the plunger assembly." The original claim language recited "modifying a volume of the toothpaste chamber in response to rotating an exposed portion of the plunger assembly." When the toothbrush of the present invention is assembled there is only one exposed portion of the plunger assembly. See FIG. 1A. The plunger assembly consists of the elements 200. See FIG. 2 and the Specification, page 9, line 14-15. It would be clear to anyone of ordinary skill in the art that there is only one exposed part of the plunger assembly. The Office Action implies that the language "the exposed portion" is used first in Claims 1 and 9. This is not the case. Claim 1 (as amended) recites "an exposed portion" on line 13. Claim 9 (as amended) recites "an exposed portion" on line 12. The Office Action, thus fails to make a *prima facie* case of indefiniteness under 35 U.S.C. § 112, second paragraph relative to the exposed portion of the plunger assembly.

Therefore, the Applicant asserts that the rejections of Claims 1-13 under 35 U.S.C. § 112, second paragraph are traversed by the above arguments.

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II. CONCLUSION

The Specification is amended to correct informalities.

FIG. 2 has been amended to add the designators to make the drawings conform to the Specification.

The Applicant has traversed the rejections of Claims 1-13 under 35 U.S.C. § 112, as being indefinite.

The Applicant has traversed the rejections of Claims 1-13 under 35 U.S.C. § 112, second paragraph.

The Office Action stated that the limitation as recited in Claims 1 and 9 are allowable.

As a result of the foregoing, the Applicants respectfully assert that Claims 1-13 are in condition for allowance and request an early allowance of these claims.

Applicants respectfully request that the Examiner call Applicants' attorney at the below listed number if the Examiner believes that such a discussion would be helpful in resolving any remaining problems.

Please apply any necessary charges or credits to deposit account 06-1050.

Respectfully submitted,

Date: January 29, 2007


Richard Frankeny
Reg. No. 47,573

Fish & Richardson P.C.
One Congress Plaza
Suite 810
111 Congress Avenue
Austin, TX 78701
Telephone: (512) 226-8159
Facsimile: (512) 320-8935

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